



Fire and Police Commission

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March 24, 2011

Senator Van Wanggaard, Chair
Committee on Labor, Public Safety, and Urban Affairs
Wisconsin State Senate

RE: Senate Bill 30

Dear Senator Wanggaard:

Thank you for the opportunity to testify before the Committee on Labor, Public Safety, and Urban Affairs concerning Senate Bill 30 held on March 22, 2011. This correspondence is a supplement to the record of my testimony.

Appended to this correspondence is Section 5.02 of the City of Milwaukee City Charter, Rule XIV of the City of Milwaukee Fire and Police Commission rules, and a City of Milwaukee Policy letter. Each of these documents describes the residency requirement for City of Milwaukee police officers and firefighters. It is important to realize that there is no black letter definition of residency, but rather each circumstance is reviewed on a case-by-case basis using the appended rules and policies. When an employee has a question concerning the requirement as it relates to their current living arrangements our rule directs them to contact their supervisor for clarification.

With respect to entrance examination failure rates for police and fire applicants we offer the following information from our most recent recruitments.

Milwaukee Police Department

- 3,569 applicants
- 32% failed to appear for the written examination
- 10% failed the written examination
- Of the 300 top-rated candidates from the written test, 57% (171) were dropped during the remaining test segments for various reasons, leaving an eligible list of 129 individuals available for hire and 1,017 available to establish future eligible lists.

Milwaukee Fire Department

- 5,710 applicants

- 32% failed to appear for the written examination
- 11% failed the written examination
- Of the 334 top-rated candidates from the written test 45% (149) were dropped during the remaining test segments for various reasons, leaving an eligible list of 185 individuals available for hire and 2,897 available to establish future eligible lists.

With respect to Milwaukee Police Association representative Mark Buetow's testimony that he attempted to file a complaint on two occasions concerning residency compliance by our current Chief of Police, we have no records of such a request. All staff personnel were interviewed and have no recollection of any such contact from Mr. Buetow or any Milwaukee Police Association representative. We accept all complaints and conduct an investigation of each and every complaint that we receive by mail, email, fax, our website www.city.milwaukee.gov/fpc, telephone, or in person at our office or one of our thirteen community partner sites located throughout Milwaukee. I am personally aware that our Chief of Police is in compliance with the residency requirement.

With respect to Milwaukee Police Association representative Mark Buetow's testimony that previous chiefs were in violation of the residency requirements, we consider such allegations mere speculation and baseless rhetoric propounded in an effort to sway opinion. We are not aware of any evidence in support of these allegations.

We strongly support maintaining the current policy of residency as a matter determined by local governments. I urge you to carefully consider your position on this issue. I remain available to provide any additional information to assist the Committee in its review of this matter.

Sincerely,



Michael G. Tobin
Executive Director

MGT:mk

Att

CHAPTER 5 CITY EMPLOYEES AND OFFICERS

TABLE

5-01	City service; offices excepted
5-02	Residency requirements
5-03	Examination notice
5-05	Compensation for services
5-06	Bi-weekly payment of salary
5-07	Accounts of moneys received
5-08	Negligence of duty
5-09	Interest in contracts
5-10	Pecuniary interest in public service contracts
5-11	Conflicts of interest
5-12	False certification of work
5-13	Prohibited practices
5-50	Deferred compensation plan

5-01. City Service; Offices Excepted. Officers of the city of Milwaukee who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created or exists by reason of statute, heads of any principal departments of the city, all members of the fire and police departments and all other employees of the fire and police departments, one private secretary of the mayor and any other officers, clerks or employees in the service of the city whose positions in the judgment of the city service commissioners cannot for the time being be subjected, with advantage to the public service, to the general rules prepared under the civil service law, shall not be affected as to their election, selection or appointment by such rules made by said commissioners.

(HISTORY: Section 5-01, am., Ch. Ord. 310, File #64-4089, April 6, 1965.)

5-02. Residency Requirements. 1. RESIDENCY REQUIRED. All employees of the city of Milwaukee are required to establish and maintain their actual bona fide residences within the boundaries of the city. Any employee who does not reside within the city shall be ineligible to employment by the city and his employment shall be terminated in the manner hereinafter set forth.

2. DEFINITION. The term "residence" employed in this section shall be construed to mean the actual living quarters which must be maintained within the city by an employee.

Neither voting in the city nor the payment of taxes of any kind by itself by an employee shall be deemed adequate to satisfy the requirements of this section, nor shall the provisions of this section be satisfied by the maintaining of a rented room or rooms by an employee solely for the purpose of establishing residence in the city when it appears that his or her residence is outside of the city. Ownership of real property within the city, when not coupled with maintaining of actual living quarters in the city as herein required, shall be deemed insufficient to meet the requirements of this section. The city service commission is authorized to investigate complaints made to it with respect to the residence of employees of the city and may initiate any such investigation on its own motion. Whenever such investigation shall be made, the city service commission shall make a finding with respect to whether or not such an employee is or is not actually a resident of the city in accordance with the requirements set forth herein. No consideration shall be given by the city service commission to the fact that such employee intends to maintain a residence in the city if actually he or she does not maintain such a residence as herein provided for.

3. DUAL RESIDENCE. In cases in which dual or multiple residences are rented, owned or maintained by an employee, it is not sufficient for the employee to claim city residency because of rental, ownership or maintenance of a residence in the city if the employee's actual living quarters are not in the city. The city service commission shall make final determination in dual or multiple residence cases as to which location constitutes an employee's actual living quarters, and it shall be the location which will be considered in establishing whether an employee complies with the intent of this section and city service rules relating to residency. The city service commission shall promulgate and publish a policy statement describing factors which it will consider when making residency determinations. This statement will in no way limit the commission's consideration to any specific set of factors. Decisions involving dual or multiple residency shall be based upon the totality of circumstances present in each case. The decision of the city service commission

5-02-4 City Employees And Officers

shall be final in respect to whether or not such employee's residence satisfies the provisions and requirements of this section.

4. TIME TO MOVE TO CITY, ETC.

a. Any city employee who resides on any property belonging to the city of Milwaukee, although located outside the limits of said city, shall not be affected by the restrictions of this section. Any area which has been by ordinance annexed to or consolidated with the city shall be regarded as being a part of the city unless such ordinance shall be finally declared invalid by a court of competent jurisdiction. In the event of such occurrence, an employee shall be granted a reasonable period of time in which to move into the city. The city service commission shall establish what constitutes a reasonable period of time for that purpose.

b. Any employee of the city residing in an area which is no longer a part of the city shall have a reasonable time within which to move into the city. The city service commission shall establish what constitutes a reasonable period of time for that purpose.

5. ACTION BY DEPARTMENT HEAD.

Whenever a department head finds that an employee is not a resident of the city within the meaning of this section, the department head shall immediately file a written complaint against that employee to effectuate the separation of that employee from the service.

6. EXTENSION. Whenever it shall appear to the city service commission that good cause exists for granting extensions of time to employees of the city to obtain residences within the city, or if it shall appear to the city service commission that a new or prospective employee of the city would require a reasonable period of time in order to acquire a residence in the city so as to qualify for a position in city service, the city service commission may allow such employee a period of not to exceed 6 months in which to satisfy the requirements of this section.

7. HARDSHIP EXCEPTIONS.

a. Whenever it shall appear to the city service commission, considering the standards hereafter enumerated, that an employee should be granted temporary exception from the requirements of this section, the city service commission shall make a finding based upon the standards and shall file a report with the committee on finance and

personnel, listing the name of the employee and the reason or reasons for the exception, such report to be filed within 15 days of such action.

b. In the event that a city employee weds an employee of another jurisdiction which also has a residency requirement, mandating that its employee reside within that jurisdiction's boundaries, and if that employment is in effect at the time of the marriage, the city service commission may grant the city employee an exemption from the city's residency requirements, provided that the following conditions are and remain in effect:

b-1. That the other jurisdiction is willing to enter into an appropriate reciprocity agreement with the commission concerning such transactions.

b-2. That the city employee actually resides with his or her spouse in the spouse's jurisdiction.

b-3. That both employing jurisdictions retain their respective residency policies.

b-4. That the response time required for the exempted employee to arrive at work in emergency situations be reasonable as determined by the commission.

b-5. That the residency requirements of the other jurisdiction would preclude the married couple from living in the city of Milwaukee.

8. REVIEW STANDARDS. a. The following factors may be considered by the city service commission in deciding to grant or not to grant an exception to the residence requirement:

a-1. Availability of persons eligible.

a-2. Requisite technological or professional education.

a-3. Responsibility of the job.

a-4. Quantity of persons eligible.

a-5. Quality of the service to be performed.

a-6. Ability to supervise.

a-7. Need to know conditions within the city.

a-8. Diminution of absenteeism and tardiness.

b. This attempt to establish standards for exceptions of the residency requirement recognizes that such standards need not be specified with exactitude. It further recognizes that mere eligibility and availability does not necessarily offer the range of selection which will contribute to the development of the best service.

c. Exceptions granted to employees previously will be reviewed immediately upon passage and publication of this subsection and all exceptions will be reviewed once every year.

9. FIRE AND POLICE REGULATIONS. The provisions of this section shall be fully applicable to members of the police force and the fire department. However, in the case of a member of the police force or fire department, or any clerical employe thereof, the determination as to residence shall be made by the fire and police commission, and the responsibility for the administration, interpretation and enforcement of this section shall be vested in the fire and police commission.

10. COMPLIANCE. In construing and applying the provisions of this section, the provisions of any section inconsistent herewith shall be deemed amended so as to be in all respects consistent with the provisions of this section.

(HISTORY: Section 5-02 rc. Ch. Ord. 226, File #56-1775-a, Sept. 18, 1956.

5-02-2 am., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-3 am. Ch. Ord. 253, File #59-395-a, June 9, 1959.

5-02-3 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-3 cr., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-4 rc., File #941973, Dec. 17, 1996; eff. Mar. 10, 1997.

5-02-4 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-5 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-6 rc., Ch. Ord. 427, File #73-2118-a, Nov. 11, 1975.

5-02-6 am., File #941973, Dec. 17, 1996; eff. Mar. 10, 1997.

5-02-6 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-7 rc., Ch. Ord. 427, File #73-2118-a, Nov. 11, 1975.

5-02-7 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-8 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-9 rn., File #971321, Mar. 20, 1998; eff. June 4, 1998.)

5-03. Examination Notice. 1. TO BE POSTED. Notice of each examination to be held by the

~~board of city service commissioners of the city of Milwaukee shall be given by posting such notice in or immediately adjacent to the office of the said board at least 10 days prior to the last day announced for receipt of applications, and said posting shall be such as to make the said notice readily accessible to public view. Nothing herein shall prohibit or restrain the said board or its chief examiner from giving such further publicity as it or he may deem to be useful.~~

2. APPLICATION FORM. Every application for examination by the board of city service commissioners, in order to entitle the applicant to be examined, must be on a form prescribed by the said board, and shall include such facts regarding age, residence, citizenship, education, experience and other subjects as are customarily called for in civil service application blanks. Such other information shall be furnished by the applicant as may reasonably be required regarding the applicant's fitness for the public service.

(HISTORY: Section 5-03 am. Ch. Ord. 120, File #74714-a, July 13, 1942.

5-03 am. Ch. Ord. 149, File #48-2837-a, March 28, 1949.)

5-05. Compensation for Services. No officer or employe receiving a salary from any city whether organized under general or special law, shall receive for service of any kind or nature rendered such city any compensation therefor other than the salary fixed and provided for such office, except as provided in the salary ordinance. This section shall apply to all officials now serving or hereafter elected or appointed to public place. Provided, that for the purposes of this section moneys or funds held by any such city as pension funds shall not be considered or construed to be city money or funds, and that the payment to or receipt by any person of any money from any such funds shall not be construed as the payment or receipt of money or compensation from such city. Provided further, that this section shall not apply to nor be construed to prohibit the employment of any such official or employe by any school board of such city for the purpose of supervision, teaching or other duties in any evening or night school, social center, summer school, or other extension activity, and that the payment to or receipt by any such person of any money for such service shall not be

RULE XIV.

RESIDENCY

- Section 1. All employees of the City of Milwaukee, including all members of the Fire Department and Police Department, are bound by City of Milwaukee Charter provisions regarding residency and are required to establish and maintain their actual and bona fide residence within the boundaries of the city throughout the period of employment by the city. It is strongly presumed that adequate housing, transportation, educational opportunities, health care and other amenities exist within the City of Milwaukee so as to permit all employees to establish and maintain a bona fide residence within the boundaries of the city as required. (Rev. 10/3/02)
- Section 2. Unless an extension of time to establish residency or a temporary exemption from the residency requirement has been granted by the Board, failure of any employee of the Milwaukee Fire Department or Milwaukee Police Department to reside within the boundaries of the City of Milwaukee shall render that employee ineligible for continued employment and shall result in termination of that employee. (Rev. 10/3/02)
- Section 3. All new employees of the Fire Department or Police Department who are not already employees of the City of Milwaukee shall be granted a period of time not to exceed six (6) months from the date of hire to establish a residence within the boundaries of the City of Milwaukee. All individuals who are hired as members of the Fire Department or Police Department are expected, upon being hired, to immediately begin taking all steps necessary to meet the residency requirement within six (6) months of the date of hire. Extensions of the six (6) month time period for establishing a bona fide residence within the City of Milwaukee are not favored and will not be granted absent extraordinary circumstances. (Rev. 10/3/02)
- Section 4. Any newly hired member of the Fire Department or Police Department who believes it may be necessary to request an extension of the time period for establishing residency, or any other member who believes it may be necessary to request a temporary exemption from the residency requirement, shall file such request in writing with the Fire and Police Commission, together with copies of all supporting documentation, at least thirty (30) calendar days prior to the date on which the extension or temporary exemption is anticipated to begin. Failure to file the request on a timely basis, absent extraordinary circumstances, shall be grounds for denial. The requestor shall forward a copy of the request to the Chief of the respective department. (Rev. 12/4/08)
- Section 5. Any request for an extension or temporary exemption shall specify, in detail, the reason(s) for the request and shall be accompanied by copies of all documentary

evidence in support thereof including, but not limited to, real estate listing contracts, apartment leases, medical reports, educational reports, etc. Failure to supply appropriate supporting documentation together with the request shall be grounds for denial of the request. The burden of proof regarding whether or not a request for an extension or temporary exemption should be granted shall at all times be on the requestor. There is a strong presumption against the granting of all such requests absent extraordinary circumstances. (Rev. 10/3/02)

- Section 6. Any request for an extension or temporary exemption or supporting documentation which contains medical information shall be treated and maintained as confidential by the Fire and Police Commission, the Fire and Police Departments, and their respective staffs. Such information shall be utilized solely for the purpose of evaluating the request for extension or temporary exemption, and no further release of such information may be made other than to individuals, entities, corporations or health care providers referred to therein for the purpose of verifying and/or clarifying information contained in the request. (Rev. 10/3/02)
- Section 7. Upon receipt of a request and appropriate supporting documentation, the request shall be referred to Fire and Police Commission staff for investigation and preparation of a report to be submitted to the Board. Any employee making a request shall, upon request, immediately provide any and all releases necessary for Commission staff to obtain additional information, including medical information that may have a bearing upon the request. Failure by the employee to immediately supply the necessary releases shall be deemed a failure to cooperate and shall result in denial of the request for extension. (Rev. 12/4/08)
- Section 8. The Board shall not be limited to information supplied by the requestor. Staff may seek and obtain additional information which is relevant to the request. Upon completion of its investigation, staff shall prepare a written report. Copies of any additional information obtained by staff, along with a copy of the report to the Board, shall be supplied to the requestor. (Rev. 12/4/08)
- Section 9. The Board shall review the request, supporting documentation, and the report of staff prior to making its decision at a public meeting with the understanding that the report is conclusive and should be adopted unless good cause to the contrary is shown. The employee requesting the extension or temporary exemption shall be notified of the meeting and invited to address the Board. Board members may pose questions to the employee. A roll call vote will be taken on the request. The decision of the Board may be to grant the request as made, or grant the request with modifications, or deny the request in whole or in part. The decision of the Board will be reduced to writing and a copy forwarded to the employee and the respective Department within ten (10) calendar days of the vote by the Board. (Rev. 12/4/08)

Section 10. All employees of the Fire Department and Police Department shall complete a "Residency Requirement Compliance Certification" in a form approved by the Board. A new certification shall be completed within 72 hours of a change in residence. Each certification shall be maintained and reviewed by the respective department. (Rev. 9/16/10)

Section 11. Any employee of the Fire Department or Police Department that uses living quarters outside the corporate limits of the City of Milwaukee on a regular or frequent basis, excluding a vacation property or cottage, shall indicate with particularity such usage when completing the "Residency Requirement Compliance Certification." Any employee with questions as to whether their current living arrangement complies with Section 5.02 of the City Charter shall contact their department supervisor prior to completing the certification form. (Rev. 9/16/10)

City Residency Requirement

As a condition of your employment with the City, you must be a resident of Milwaukee (not a suburb). If you are a new employee and currently reside outside of the City, you must move into the City. Employees residing outside the City should have their department contact the Department of Employee Relations - Administration Division (286-3398) on relocation time allowance.

Only the City Service Commission has the authority to waive, for very special reasons and for short periods of time, the residence requirement. The Commission is also the only body empowered to rule on actual residence. Unless you meet established residence requirements, you are not entitled to receive your pay.

Section 5.02 of the City Charter requires City residency for its employees. Since the Milwaukee City Service Commission has enforcement responsibility for this provision, the Commission has directed that the following points be communicated to all employees:

1. Employees of the City of Milwaukee, whether regularly appointed or exempt, are required to maintain a bona fide residence within the City of Milwaukee and are required to live at the residence.
2. Employees who believe they have a legitimate reason for residing outside of the City for any period of time are required to request and receive permission from the City Service Commission in advance of establishing such a residence.
3. Employees found to be in non-compliance with the residency ordinance may be subject to immediate termination or discharge.
4. Employees with questions about the City residency requirements should contact either their immediate supervisor or the Department of Employee Relations at (286-3398).

Personnel Policy #87/4 (9/16/87):

City of Milwaukee employees are required to maintain their actual bona fide residences within the City boundaries. Pursuant to Charter Ordinance, sec. 5.02, and Civil Service Rule VIII, sec. 11, the City Service Commission is authorized to make determinations relative to cases involving dual residency. The following is the Commission's policy with respect to such cases.

Dual Residency Policy Statement:

In cases in which dual (or multiple) residency is an issue, a determination shall be made as to which location constitutes the actual residence and it shall be that location which will be considered in establishing whether an employee is in conformity with the intent of the Charter Ordinance and Civil Service Rule. Maintaining a rented room or rooms or maintaining living quarters with a friend or relative, when done principally for the purpose of establishing City residency shall not be considered as conforming. Neither ownership of real property in the City with payment of taxes, nor voting in the City shall be deemed adequate, unless the actual living quarters are in the City.

The determination of actual residency shall include but not necessarily be limited to an overall consideration of the following factors:

1. At which location does the employee's family reside and attend school?
2. At which location does the employee keep his or her tangible personal property and effects?
3. At which location does the employee receive his or her correspondence?
4. At which location does the employee spend his or her time?
5. Which location does the employee list for official documents?
6. Which location is more suitable in terms of aesthetics, habitability, comparative comfort, convenience and regular access?
7. At which location is habitation fixed without any present intent to move?
8. At which location is there an apparent intent to make a permanent domicile?

In the event that one location is owned and the other is rented, some presumption of residency shall be applied to the owned property.

Decisions involving dual residency require judgment based upon the totality of circumstances present in each case. The aforementioned are among the indicia that will be considered in applying that judgment on a case-by-case basis. This underscores the fact that the intent of the Rule and Ordinance is to ensure that all employees are actual bona fide residents of the City of Milwaukee and that the City Service Commission will not tolerate subterfuge as a means of evading this unequivocal intent.

